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No. 88

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, AND CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY, *Appellants*,

VS.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*, *Appellees*

BRIEF ON BEHALF OF PIEDMONT & NORTHERN RAILWAY COMPANY, GEORGIA & FLORIDA RAILROAD, AND W. V. GRIFFIN AND H. W. PURVIS, AS RECEIVERS OF GEORGIA & FLORIDA RAILROAD, APPELLEES.

W. S. O'B. ROBINSON, JR.,
Attorney for Piedmont and Northern Railway Company, *Appellee*.
JAMES M. HULL, JR.,
GEORGE B. BARRETT,
J. J. WILLINGHAM,
Attorneys for Georgia and Florida Railroad and W. V. Griffin and H. W. Purvis, as its Receivers, *Appellees*.

Charlotte, N. C.,
November 17, 1931.

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ARGUMENT:

1. The restrictive schedules would have impaired the neutrality of the Clinchfield Railroad, in violation of Condition 3 of the Clinchfield Lease, and would have excluded the Greenwood extension of the Georgia & Florida Railroad and the Piedmont & Northern Railway Company from participating, in connection with the Clinchfield Railroad, in through routes and joint rates between the points designated in Condition 4 in violation of that condition 11

2. The contentions of appellants that the conditions do not require the lessees to embrace the Clinchfield Railroad in any through routes which would short haul other lines of the lessees, or either of them, except routes in existence at the time of the lease, and that the conditions as interpreted and construed by the Commission and the District Court were beyond the Commission's authority, are completely answered by the report of the Commission (R. 14), and the opinion of the District Court (R. 135) 15

3. The Commission and the District Court correctly interpreted the terms "connecting lines reached by the line of the Clinchfield," and "Carriers, now connecting, or which may hereafter connect, with the line of the Clinchfield," as including the Greenwood extension of the Georgia & Florida Railroad within the scope of their meaning 24

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THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, PIEDMONT & NORTHERN RAILWAY COMPANY, GEORGIA & FLORIDA RAILROAD, AND W. V. GRIFFIN AND H. W. PURVIS, Receivers of Georgia & Florida Railroad, *Appellees*.

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STATEMENT OF CASE

This is an appeal by the plaintiffs from a decree of the District Court, for the Western District of South Carolina. The suit in which the decree was entered was instituted by the Atlantic Coast Line

Railroad Company, Louisville & Nashville Railroad Company, and Charleston & Western Carolina Railway Company, against The United States, to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission which required the plaintiffs, and other carriers who were respondents in the proceeding before the Commission, to cancel certain schedules filed as amendments to joint tariffs theretofore filed with the Commission.

The Interstate Commerce Commission, Piedmont & Northern Railway Company, Georgia & Florida Railroad, and W. V. Griffin and H. W. Purvis, in their representative capacities as Receivers of the Georgia & Florida Railroad, intervened as defendants in support of the order of the Commission.

The District Court adopted the Commission's findings of fact, and for the reasons set forth in the opinion of the court refused to enjoin the enforcement of the order, and entered its decree dismissing the bill of complaint (R. 147).

The schedules, which the Commission directed to be cancelled, were designed to cause through traffic passing over the Clinchfield Railroad, which extends from Elkhorn City, Kentucky, to Spartanburg, South Carolina, to be routed between Augusta, Georgia, and Spartanburg, South Carolina, over the line of the Charleston & Western Carolina Railway Company, to the exclusion of the line of the Georgia & Florida Railroad and the Piedmont & Northern Railway Company, consisting of the Greenwood extension of the

Georgia & Florida Railroad between Augusta, Georgia, and Greenwood, South Carolina, and the line of the Piedmont & Northern Railway Company between Greenwood and Spartanburg (R. 8, 14, 136).

The proposed schedules would have accomplished this purpose by inserting in the tariffs restrictions providing that the joint rates published in the tariffs would not apply over the Greenwood extension between Augusta, Georgia, and Greenwood, South Carolina (R. 14, 16).

Before the construction of the Greenwood extension the Piedmont & Northern Railway Company had no connection at Greenwood, South Carolina, with whom it could handle through traffic moving in connection with the Clinchfield Railroad to, from or through Spartanburg. The Greenwood extension was constructed under authority granted by the Interstate Commerce Commission in re-organization of Georgia & Florida Railway (117 I. C. C., 477), and was completed and put in operation on June 1, 1929, and on its completion provided, together with the Piedmont & Northern Railway Company, a new line of railroad between Augusta, Georgia, and Spartanburg, South Carolina, roughly paralleling the Charleston & Western Carolina Railway Company between these points and competing with it in the interchange of through traffic with the Clinchfield Railroad at Spartanburg (R. 7).

The restrictive schedules were filed shortly before the completion of the extension; they would have become effective on its completion; and would have

frustrated the purpose for which the extension was constructed (R. 14, 22, 23).

Appellants urge in justification of the restrictive schedules that the Clinchfield Railroad and the Charleston & Western Carolina Railway are operated in conjunction with and under the management or control of the Atlantic Coast Line Railroad Company, within the meaning of Sec. 15(4) of the Interstate Commerce Act, as amended by Transportation Act of 1920 [49 U. S. C. A., 15(4)], and that to allow the Piedmont & Northern and Georgia & Florida between Augusta and Spartanburg to participate in through traffic passing over the Clinchfield under joint rates, requires the Atlantic Coast Line without its consent to accept a short haul on such traffic, in violation of the provisions of Sec. 15(4) (R. 136).

The Clinchfield Railroad, which is owned by the Carolina, Clinchfield & Ohio Railway Company, and its subsidiaries, was leased, in 1924, for the term of 999 years, to the Atlantic Coast Line Railroad Company and the Louisville & Nashville Railroad Company as joint lessees, pursuant to authority granted by the Interstate Commerce Commission in Clinchfield Railway Lease (90 I. C. C., 113); but in approving the lease the Commission imposed certain conditions which it found to be necessary in the public interest, and to which the lessees were required to consent (R. 67, 91, 92, 99):

Conditions 1, 3 and 4, which are the ones pertinent here, are as follows:

"1. The applicants shall establish and maintain a separate organization for the combined properties of the Carolina, Clinchfield & Ohio Railway and its subsidiaries, so that the three companies shall constitute a separate operating unit, having a responsible management directly in charge of the operations of such properties.

"3. So far as lies within the power of the applicants, existing routes and channels of trade and commerce heretofore established by other carriers in connection with the Clinchfield shall be preserved, existing gateways for the interchange of traffic with such other carriers shall be maintained, and the present neutrality of handling traffic inbound and outbound by the Carolina, Clinchfield & Ohio Railway and its subsidiary, the Carolina, Clinchfield & Ohio Railway of South Carolina, shall be continued so as to permit equal opportunity for service and routing or movement of traffic which is competitive with traffic of the applicants, or either of them, to and from all connecting lines reached by the line of the Clinchfield companies, without discrimination in service against such competitive traffic.

"4. The applicants shall permit the line of the Clinchfield and its subsidiaries to be used as a link for through traffic, via existing gateways of interchange, or via such

gateways as may hereafter be established under authority of the Commission by means of the connecting lines which the Louisville & Nashville Railroad Company proposes to build, equally available to such other carriers, now connecting, or which may hereafter connect, with the lines of the Clinchfield and its subsidiaries, as may desire to participate in through routes and joint rates between points in territory north and west of the line of the Clinchfield and points at and beyond the Ohio River on the one hand and points in southeastern and Carolina territory on the other, under divisions to be agreed upon by the applicants, or either of them, and/or the Clinchfield organization, on the one hand, and by the other participating carrier or carriers on the other, and shall not discriminate as to rates, fares, and charges against such participating carrier or carriers as compared with the applicants, or either of them; the intention of this provision being that the line of the Clinchfield and its subsidiaries shall be maintained as an open route equally available to all carriers connecting with the Clinchfield for traffic between the points designated."

The Commission ordered that the restrictive schedules be cancelled as violative of Conditions 3 and 4, and the District Court refused to enjoin the enforcement of the Commission's order and dismissed the bill of complaint for the same reason.

The Commission found the facts as to the relationships existing among the Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Clinchfield Railroad and Charleston & Western Carolina Railway Company (R. 23, 24, 25); but in view of its ruling that the proposed schedules were violative of the conditions of the Clinchfield Lease it did not discuss or decide the question as to whether on the facts found the Clinchfield Railroad and the Charleston & Western Carolina Railway are operated in conjunction with and under the management or control of the Atlantic Coast Line Railroad Company, within the meaning of Sec. 15(4) (R. 30). But the District Court went further, and on the facts found by the Commission did conclude that the Clinchfield Railroad and the Charleston & Western Carolina Railway are so operated by the Atlantic Coast Line Railroad Company within the meaning of that section (R. 139).

STATUTES

Section 5(2) of the Interstate Commerce Act, as amended by the Transportation Act of 1920 [41 Stat. 481, 49 U. S. C. A., 5(2)], under which the Commission acted in imposing the conditions in the Clinchfield Lease Case, provides:

> "Section 5(2). Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the

extent indicated by the Commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises."

Section 15(7), under which the Commission acted in first suspending, and then, after hearing, ordering the cancellation of the restrictive schedules, so far as its provisions are relevant, provides:

"Section 15(7). Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concern-

> ing the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. . . . At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare or charge, is just and reasonable shall be upon the carrier."

Section 15(4), on which appellants rely, provides that in establishing a through route—

> "the Commission shall not (except as provided in Section 3, and except where one of the carriers is a water line), require any car-

rier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established."

ARGUMENT

I

The Restrictive Schedules Would Have Impaired the Neutrality of the Clinchfield Railroad, in Violation of Condition 3 of the Clinchfield Lease, and Would Have Excluded the Greenwood Extension of the Georgia and Florida Railroad and the Piedmont and Northern Railway Company From Participating, in Connection With the Clinchfield Railroad, in Through Routes and Joint Rates Between the Points Designated in Condition 4 in Violation of That Condition.

Appellants do not challenge the correctness of the following statement from the opinion of the District Court:

> "The through routes and rates in question, 304 in number, were established by joint tariffs in which the complainants (the appellants), the P. & N. and G. & F. participated, and which were filed prior to the completion of the Greenwood extension of the G. & F. between Greenwood and Augusta. They applied to traffic passing over the C. C. & O. between points at and beyond the Ohio River on the one hand and points in south-eastern and Carolina territory on the other. Prior to the completion of the Greenwood extension, the natural course of this traffic between Spartanburg and Greenwood was over the line of the C. & W. C. The Greenwood extension was completed and opened to traffic

on June 1, 1929; and a route via the P. & N. from Spartanburg to Greenwood and via the G. & F. from Greenwood to Augusta thereupon became automatically available for this through traffic passing over the C. C. & O. under the through routes and rates theretofore published. It was to exclude this route from the provisions of the tariffs establishing through routes and rates that the restrictive schedules were filed by the complainants."

Condition 4 of the Clinchfield Lease requires that the line of the Clinchfield shall be maintained as an open route equally available to all carriers then connecting, or which might thereafter connect with the line of the Clinchfield, for traffic between "points at and beyond the Ohio River on the one hand and points in the southeastern and Carolina territory on the other," and that the lessees shall not discriminate as to rates, fares, and charges against such participating carrier or carriers as compared with themselves or either of them.

The restrictive schedules would have prevented the route via the P. & N. from Spartanburg to Greenwood and via the G. & F. from Greenwood to Augusta from participating, in connection with the Clinchfield, in through routes and joint rates on traffic between the points designated in Condition 4.

Condition 3 requires that the neutrality of handling traffic inbound and outbound by the Carolina, Clinchfield & Ohio Railway, and its subsidiary, the Caro-

lina, Clinchfield & Ohio Railway Company of South Carolina, as it existed at the time of the lease, shall be continued so as to permit equal opportunity for service and routing or movement of traffic which is competitive with traffic of the lessees or either of them, to and from all connecting lines reached by the line of the Clinchfield Companies, without discrimination in service against such competitive traffic.

The Commission found as a fact, on the evidence introduced before it, that the restrictive schedules would impair this neutrality (R. 29).

This finding was adopted by the District Court (R. 147); it was not challenged by appellants; and cannot now be challenged by them, because the evidence on which it was made is not before the court (*Edward Hines Yellow Pines Trustees* v. *United States*, 263 U. S., 143; *Louisiana & Pine Bluff R. Co.* v. *United States*, 257 U. S., 114).

Appellants allege that the "Greenwood extension, when constructed and put into operation on June 1, 1929, for the first time provided, together with the Piedmont & Northern Railway Company, a new line of railroad between Augusta, Ga., and Spartanburg, S. C., roughly paralleling the line of the Charleston & Western Carolina Railway Company between said points" (R. 7); that the restrictive schedules were "designed and appropriate to make the through rates, published by or for the account of said railroads (A. C. L. Railroad Company, C. & W. C. Railway Com-

pany, Georgia Railroad, and Clinchfield Railroad), on traffic moving northbound or southbound over the Clinchfield Railroad from, to or through Augusta, Ga., not applicable if the traffic was moved between Greenwood, South Carolina, and Augusta, Georgia, over the Greenwood extension of the Georgia & Florida Railroad. The purpose of these restrictions was to preserve to the Atlantic Coast Line Railroad Company and its system line, the Charleston & Western Carolina Railway, the long haul protected by the provisions of paragraph 4 of Section 15 of the Interstate Commerce Act" (R. 8).

They allege further that "the publication of said restrictive schedules did not close any route or channel of trade, or gateway for interchange of traffic which had theretofore been opened, nor in any way change any condition, with reference to the movement or handling of traffic via the line of the Clinchfield Railroad, in existence at the time of the lease authorized in the Clinchfield Lease Case" (R. 8); and allege that the Commission by its order "erroneously construed Conditions 3 and 4 of the Clinchfield Lease Case . . . as requiring the Atlantic Coast Line Railroad Company to embrace in through routes substantially less than the entire length of its railroad and of intermediate railroads operated in conjunction and under a common management and control therewith" (R. 2).

II

The Contentions of Appellants That the Conditions do Not Require the Lessees to Embrace the Clinchfield Railroad in Any Through Routes Which Would Short Haul Other Lines of the Lessees, or Either of Them, Except Routes in Existence at the Time of the Lease, and That the Conditions as Interpreted and Construed by the Commission and the District Court Were Beyond the Commission's Authority, Are Completely Answered by the Report of the Commission (R. 14), and the Opinion of the District Court (R. 135).

(1) Section 5(2) of the Interstate Commerce Act, as amended by the Transportation Act of 1920 [41 Stat. 481, 49 U. S. C. A., 5(2)], authorizes the Commission, as the District Court said:

> "to approve the acquisition by one carrier of the control of another by lease or otherwise 'on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.' It is not only the right but the duty of the Commission to impose such conditions as will make the acquisition in the public interest; for, unless the acquisition is found to be in the public interest, the Commission cannot authorize it. Chicago Junction Case 264 U. S., 258, 265. In this case the Commission found that the lease would not be in the public interest unless the conditions in question were imposed; and consequently without them the lease could

not have been authorized. If they were beyond the power of the Commission, it results not that they are void and the lease unconditional, but that the lease itself is unauthorized. We think, however, that it was clearly within the power of the Commission to impose them.

"Complainants rely upon the recent decision of the Supreme Court in *U. S.* v. *Chicago, M., St. P. & P. R. Co.* ..... U.S., ..., 51 Sup. Ct. Rep. 159. That case, however, is not remotely in point. There the condition imposed related not to the control of interstate commerce, but to the disposition of a fund subscribed for a special purpose; and it was held that the condition was void because imposed without authority of law, in that it related to a contract which 'was not one in respect of commerce but involved a transaction distinct and complete in itself without regard to its results; and, whether succeeded by commerce or not, was no part of it.' Here the conditions relate directly to interstate commerce, prescribing how a line of railroad engaged in interstate commerce is to be operated with relation to other interstate carriers, and the manner in which interstate traffic over such line is to be handled. Their effect was to authorize the acquisition of the C. C. & O. by the A. C. L. and the L. & N. in such way as to enable those roads to serve

the purposes which they put forward as reasons for the acquisition and at the same time to preserve the independent status of the C. C. & O. for the benefit of the public and the protection of connecting carriers.

"It is argued that as construed by the Commission, the conditions in question are violative of Section 15(4) of the Interstate Commerce Act as amended by the Transportation Act of 1920 [49 U. S. C. A., 15(4)], in that they require the A. C. L. and the L. & N., without their consent, to embrace in through routes substantially less than the entire length of their lines and the lines of intermediate roads operated under a common management or control. The answer is that these carriers gave their consent to this when they accepted the C. C. & O. lease, one of the provisos of the order which approved the lease being as follows:

"'That the making of said lease and exercise of any of the rights conferred by this order shall in all future proceedings, judicial as well as administrative, to which the carriers above named or any of them may be parties, be deemed and taken as conclusive evidence of their acceptance of, and agreement to abide by, the conditions enumerated in said report, and numbered from 1 to 5, inclusive'" (R. 144, 145, 146).

The District Court said:

"The purpose of the conditions was to withhold from the lessees a partisan control of the C. C. & O. so that its line would remain available on equal terms to their competitors; and we think that this purpose was clearly expressed in the language of the conditions. The plain meaning of that language is that the existing neutrality of the C. C. & O. is to be continued 'so as to permit equal opportunity for service *and routing or movement* which is competitive with traffic of applicants' and that the line of the C. C. & O. is to be maintained 'as an open route equally available to all carriers connecting with the Clinchfield for traffic between the points designated.'

"When the lease was before the Commission the L. & N. urged that same be approved to enable it to relieve an intolerable car supply condition on certain of its lines (90 I. C. C., 111). The A. C. L. put forward the plea that it had no coal on its own rails and desired access over controlled lines to the coal fields of Kentucky and southwestern Virginia (90 I. C. C., 122). It was urged in addition that the opening of the new route which the lease would make available would enable the L. & N. to get into the western Carolinas in competition with the

Southern and that sundry benefits would accrue to the entire territory affected as a result (90 I. C. C., 127 and 128). Those opposing the lease, including the G. & F., contended that its approval would destroy certain existing and *potential* routes, withdraw effective competition as to large areas reached by the A. C. L., and give the A. C. L. an undue advantage in transportation in the southeast. The G. & F. objected on the specific ground that it intended to seek permission to build its Greenwood extension, and that, if the A. C. L. were permitted to lease the C. C. & O., this extension would be discriminated against in favor of the C. & W. C. by means of restrictions of joint rates" (R. 139, 140).

Then after reviewing the record in the Clinchfield Lease Case (90 I. C. C., 113), the Court said:

"In the light of this record, we think there can be no doubt of the correctness of the conclusion that the line of the C. C. & O. was to be continued as a neutral route and that in a case such as this roads handling through traffic passing over it were to be treated just as though the lease were not in existence and the C. C. & O. were an entirely independent road independently operated. Point is given to this conclusion when it is remembered that the G. & F. was one of the protestants at the time of the approval of the lease, and that

one of the 'potential' routes which it was sought to save from destruction, and which the conditions of the lease were evidently inserted to save, was the route to be provided by the connection of the Greenwood extension with the P. & N. After the lease was approved, the Commission approved the building of the Greenwood extension by the G. & F. at a cost of $3,300.000. And, while we do not think that the A. C. L. is estopped from making its present contention by failing to protest when the G. & F. sought a certificate of public necessity and convenience for the building of this extension, the fact that it did not do so although invited to appear by the Commission is a pertinent matter for consideration in determining the meaning of the conditions under which the C. C. & O. lease was approved; for only on the assumption that the extension was to participate in the through traffic passing over the C. C. & O. could the building of the extension be justified as a matter of public necessity and convenience. In authorizing the extension the Commission said:

" 'As an aid in securing better connections for the interchange of traffic it has been planned to extend the line from Augusta in a northerly direction to Greenwood, S. C., a distance of about 56 miles. By this extension

connection would be effected with the Seaboard Air Line and the Piedmont & Northern, the latter a strong independent electric line. Through these connections the Georgia & Florida will have direct access to the very important traffic-producing territory of northern South Carolina and central North Carolina, known as the Piedmont district. Through the medium of the Piedmont & Northern it will also have an advantageous connection with the Clinchfield Railroad at Spartanburg, S. C., and through this connection it expects to realize a substantial participation in the tonnage of coal and other commodities moving southbound over the Clinchfield destined to southern Georgia and Florida, and in the northbound movement of freight, principally citrus fruits and vegetables, from southern territory. The lines of the Southern Railway and the Charleston & Western Carolina, the latter a part of the Atlantic Coast Line system, also extend between Greenwood and Spartanburg, connecting with the Clinchfield, but as both of these lines have their own connections to the south the Georgia & Florida must look principally to the Piedmont & Northern for its interchange with the Clinchfield.' 117 I. C. C., 473, 475" (R. 141, 142).

In its report in this case the Commission said, speaking of Conditions 1, 3 and 4 in the Clinchfield Lease Case:

> "These conditions were imposed in consideration of representations made by the Piedmont, Georgia & Florida, and Seaboard, that if routes over the Clinchfield should be closed to them they would be deprived of traffic moving under joint rates which might otherwise move over their lines or future extensions thereof, and that existing and potentially competitive routes would thereby be destroyed. The Georgia & Florida also opposed the unconditional leasing of the Clinchfield because of its then announced intention of seeking our approval to extend its line from Augusta to Greenwood so as to obtain a connection with the Clinchfield at Spartanburg through the medium of the Piedmont, and expressed apprehension that if the Coast Line should be permitted to unconditionally lease the Clinchfield, the Greenwood extension, when constructed, would be discriminated against in favor of the Charleston by means of restrictions of joint rates" (R. 19, 20).

The Commission further said:

> "In authorizing that lease we said in reference to the Georgia & Florida and other opponents of the application—

" 'Those opposing the lease urge that the interest of each of the interveners and of the public in general will be best served if the Clinchfield is maintained as an independent line supported by its connection at each end. They request that any approval of the proposed acquisition be under condition that the Clinchfield be maintained as an open route, neutral or impartial, and equally available to all connections. They generally urge that unconditional approval of the application be refused.'

"The conditions imposed, and accepted by the Coast Line and the L. & N., were intended to provide in substance for the advantages thus requested, and fairly construed should have that effect. Their purpose was to preserve the relationships then existing between the Clinchfield, on the one hand, and the public and connecting lines of railroad, on the other hand, which were the relationships usually and normally existing between independent railroads and those whom it serves. This purpose is clearly indicated by the language, particularly the closing portion of Condition 3, reading:

" 'The present neutrality of handling traffic inbound and outbound by the Carolina, Clinchfield & Ohio Railway and its subsidiary, the Carolina, Clinchfield & Ohio

Railway of South Carolina, shall be continued so as to permit equal opportunity for service and routing or movement of traffic which is competitive with traffic of the applicants, or either of them, to and from all connecting lines reached by the line of the Clinchfield companies, without discrimination in service against such competitive traffic.'

"And by the corresponding portion of Condition 4, reading:

"'The intention of this provision being that the line of the Clinchfield and its subsidiaries shall be maintained as an open route equally available to all carriers connecting with the Clinchfield for traffic between the points designated.' (The points here referred to are points in territory north of the Ohio and points in southeastern territory)". (R. 28, 29).

III

The Commission and the District Court Correctly Interpreted the Terms "Connecting Lines Reached by the Line of the Clinchfield," and "Carriers, Now Connecting, or Which May Hereafter Connect, With the Line of the Clinchfield," as Including the Greenwood Extension of the Georgia & Florida Railroad Within the Scope of Their Meaning.

In answering the argument of appellants that they are entitled to restrict the joint rates from applying over the Greenwood extension, because it does not

directly connect with the Clinchfield, the Commission said:

> "There is no warrant for limiting the meaning of 'connecting lines' to the direct connections of the Clinchfield. The term is commonly used in referring to the lines in general making up a through route. There is in fact no other convenient term. The technical nature of this contention of respondents becomes apparent when it is considered that under their construction the conditions would necessarily apply to any extension of operations by the Piedmont, regardless of effect in short hauling the Coast Line. However, the conditions may not be so construed as to authorize or require the opening or maintenance of all other routes of which the Greenwood extension might physically be made a part. The test to be applied is that of the proper relationships between the Clinchfield, as an independent line, and its connections to and from southeastern territory" (R. 29, 30, 144).

This contention of appellants is somewhat similar to a contention made in the case of *St. Louis S. W. R. Co.* v. *United States*, 245 U. S., 136, where certain of the carriers concerned contended that an order of the Interstate Commerce Commission compelling the substitution of a through route and joint rate for the transportation of logs and lumber to Paducah, Ky.,

in place of a higher through rate previously charged by them, was void as to the complaining carriers because their lines did not reach Paducah, and for that reason they could not be guilty of discriminating against that city. In answer to the contention the Court said:

> "Carriers insist also that the order is void on the ground that since their 'rails do not reach Paducah, they cannot be guilty of discrimination against that city.' They, however, bill traffic via Cairo or Memphis through to Paducah in connection with the Illinois Central, thus reaching Paducah, although not on their own rails. And, thereby, they become effective instruments of discrimination. Localities require protection as much from combinations of connecting carriers as from single carriers whose 'rails' reach them. Clearly the power of Congress and of the Commission to prevent interstate carriers from practicing discrimination against a particular locality is not confined to those whose rails enter it. *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, supra.*"

The Greenwood extension in combination with the Piedmont & Northern Railway Company does connect with the Clinchfield, and reaches the Clinchfield over the rails of the Piedmont & Northern; and it was to exclude this route via the Greenwood extension from Augusta to Greenwood and via the Piedmont &

Northern from Greenwood to Spartanburg, from handling traffic, in connection with the Clinchfield, in competition with the Charleston & Western Carolina Railway Company that the restrictive schedules were filed (R. 14, 137).

To interpret the conditions as making the line of the Clinchfield available only to direct connections would very largely, if not altogether, defeat the purpose of the conditions, because direct connections must themselves have other connections, in order to use the Clinchfield as provided by the conditions.

So narrow an interpretation is not required by the express terms of the conditions; and would be at variance with their plain meaning and intent.

But even if the particular terms "connecting lines reached by the line of the Clinchfield," and "carriers, now connecting, or which may hereafter connect, with the line of the Clinchfield," were interpreted as referring primarily to direct connections, still appellants would not be justified in filing the restrictive schedules, because direct connections may use the Clinchfield for the traffic covered by the conditions in combination with their appropriate connections; and appellants (by the acceptance of the conditions) having consented to the use of the Clinchfield by direct connections could not urge Section 15(4) as a limitation on the Commission's authority to determine the reasonableness of joint rates for such traffic.

Atchison, Topeka & Santa Fe Ry. Co., et al., v. *United States, et al.*, 279 U. S., 768.

IV

The District Court Was Right in Giving Consideration to the Fact That the Commission's Interpretation of the Conditions, as Including the Greenwood Extension Within the Scope of Their Meaning, is in Accord With the Practical Interpretation Which the Interested Parties Had Given to the Conditions Prior to the Completion of the Greenwood Extension, and in Reliance Upon Which Interpretation the Greenwood Extension Was Constructed.

As shown by the report of the Commission and the opinion of the District Court the Georgia & Florida Railroad intervened in the Clinchfield Lease Case and opposed the unconditional leasing of the Clinchfield because of the announced intention of the Georgia & Florida to seek the Commission's approval to extend its line from Augusta to Greenwood so as to obtain a connection with the Clinchfield at Spartanburg through the medium of the Piedmont & Northern, and requested the Commission to impose conditions which would prevent the lessees from discriminating against the Greenwood extension, when constructed, by means of the restriction of joint rates (R. 20). The Commission in its report said that the conditions were intended to provide in substance for the advantages thus requested by the Georgia & Florida (R. 29); and the District Court said "that one of the 'potential' routes which it was sought to save from destruction and which the conditions of the lease were evidently inserted to save, was the route to be provided by the connection of the Greenwood extension with the Piedmont & Northern" (R. 141).

After the lease was approved, subject to the conditions, the Georgia & Florida made application to the Commission for authority to construct the extension, and the Commission approved its construction at a cost of $3,300,000, assigning as one of the principal reasons for the approval, "that through the medium of the Piedmont & Northern (the Georgia & Florida) would also have an advantageous connection with the Clinchfield Railroad at Spartanburg, S. C." (R. 22).

The Atlantic Coast Line Railroad Company was given notice of the Georgia & Florida Railroad's application for authority to construct the Greenwood extension, and although it had notice that the purpose of the projected extension was to give the Georgia & Florida a connection with the Clinchfield at Spartanburg, it failed to interpose any objection to the construction of the extension (R. 23, 141).

The District Court said that the failure of the Atlantic Coast Line to protest was "a pertinent matter for consideration in determining the meaning of the conditions under which the C. C. & O. lease was approved; for only on the assumption that the extension was to participate in through traffic passing over the C. C. & O. could the building of the extension be justified as a matter of public necessity and convenience."

In *Chicago* v. *Sheldon*, 9 Wall. 50, it was said:

> "In cases where the language used by the parties to the contract is indefinite or ambiguous and, hence, of doubtful construction, the practical interpretation by the parties them-

> selves is entitled to great, if not controlling, influence. The interest of each, generally, leads him to a construction most favorable to himself, and when the difference has become serious, and beyond amicable adjustment, it can be settled only by the arbitrament of the law. But, in an executory contract, and where its execution necessarily involves a practical construction, if the minds of both parties concur, there can be no great danger in the adoption of it by the court as the true one."

In *Lowrey* v. *Hawaii*, 206 U. S., 206, 22, the Court said:

> "In *Brooklyn L. Ins. Co.* v. *Dutcher*, 95 U. S., 269, 24 L. ed. 410, it was said: 'There is no surer way to find out what parties meant than to see what they have done.' So obvious and potent a principle hardly needs the repetition it has received. And equally obvious and potent is a resort to the circumstances and conditions which preceded a contract. Necessarily in such circumstances and conditions will be found the inducement to the contract and a test of its purpose."

V

The Decree of the District Court Refusing to Enjoin the Enforcement of the Commission's Order Should be Sustained on the Additional Ground That the Clinchfield Railroad is Not Operated in Conjunction and Under a Common Management or Control With the Atlantic Coast Line Railroad Company and the Charleston & Western Carolina Railway Company Within the Meaning of Section 15(4) of the Interstate Commerce Act, as Amended by Transportation Act of 1920.

Appellants seek to justify the restrictive schedules on the ground that the Clinchfield Railroad and the Charleston & Western Carolina Railway Company are operated in conjunction and under a common management or control with the Atlantic Coast Line Railroad Company, and that therefore the Atlantic Coast Line Railroad Company cannot be required to embrace the Clinchfield Railroad in through routes which would have the effect of short hauling the Atlantic Coast Line Railroad Company and its system line, the Charleston & Western Carolina Railway (R. 2, 8). Therefore unless the Clinchfield Railroad is so operated the alleged justification of the restrictive schedules fails.

On the facts found by the Commission as to the relationships existing among the Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Clinchfield Railroad, and Charleston & Western Carolina Railway Company, the District Court held that the Clinchfield Railroad and the Charleston & Western Carolina Railway Company are

operated in conjunction and under a common management or control with the Atlantic Coast Line Railroad Company, and sustained the order of the Commission directing the cancellation of the restrictive schedules only on the ground that they are violative of the conditions of the Clinchfield Lease. But the point that the Clinchfield Railroad is not so operated is still open for consideration as an additional ground on which the decree of the District Court may be sustained (*Langnes* v. *Green*, 282 U. S., 551; *Story Parchment Co.* v. *Patterson Parchment Paper Co.*, 282 U. S., 555).

It is not alleged in the bill of complaint that the Atlantic Coast Line Railroad Company has any control over the Clinchfield Railroad except such as arises by virtue of the Clinchfield Lease, and by virtue of the Atlantic Coast Line Railroad Company's ownership of 51% of the stock of the Louisville & Nashville Railroad Company (R. 5, 6). The lease was made to the Atlantic Coast Line Railroad Company and Louisville & Nashville Railroad Company as joint lessees, and therefore cannot have the effect of constituting the Clinchfield Railroad a part of the Atlantic Coast Line System unless the Louisville & Nashville itself is a part of that System.

The Commission found:

> "The Coast Line owns 596,700 shares of the capital stock of the L. & N., or about 51% of the stock issued and outstanding. The Coast Line controls the L. & N. by electing the Board of Directors of the latter, who

> in turn elect the President and other officers. These officers are charged with the operation of the property subject to the general direction of the Board. The Coast Line and the L. & N. have the same person serving as chairman of their Boards of Directors, but they maintain separate organizations to operate the respective properties. They have close working arrangements with each other in the movement of traffic and in the matter of train service" (R. 23).

It is alleged in the bill of complaint that the Charleston & Western Carolina Railway Company is "operated in conjunction and under common management or control with the Atlantic Coast Line Railroad Company" (R. 3); but no similar allegation is made in respect to the Louisville & Nashville Railroad Company. As to it the allegation is, "The Atlantic Coast Line Railroad Company owns 51% of the stock of and thereby controls said Louisville & Nashville Railroad Company." This ownership of stock, of course, does not make the Louisville & Nashville Railroad Company a part of the Atlantic Coast Line Railroad Company's System, and the Commission has found that the Louisville & Nashville Railroad Company in fact maintains a separate organization to operate its property.

The fact that the Louisville & Nashville Railroad Company joined the Atlantic Coast Line Railroad Company in the application to the Commission for authority to acquire control by lease of the Clinchfield Railroad, and that among the reasons urged in sup-

port of the application were that the lease would enable the Louisville & Nashville Railroad Company to relieve an intolerable car supply condition on certain of its lines, and would open new routes enabling the Louisville & Nashville Railroad Company to get into the western Carolinas in competition with the Southern (R. 139), show that it was not the intent of the lease to make the Clinchfield Railroad a part of the Atlantic Coast Line Railroad Company's System.

Moreover Condition 1 of the Clinchfield lease provides that, "The applicant shall maintain and operate a separate organization for the combined properties of the Carolina, Clinchfield & Ohio Railway and its subsidiaries, so that the three companies shall constitute a separate operating unit, having a responsible management directly in charge of the operation of such companies."

Respectfully submitted,

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